

SENATE AMENDMENTS

2nd Printing

By: Burkett, et al.

H.B. No. 148

A BILL TO BE ENTITLED

AN ACT

relating to aid provided to certain voters; providing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 86.0051, Election Code, is amended by adding Subsections (b-1) and (f) and amending Subsections (c), (d), and (e) to read as follows:

(b-1) A person to whom Section 86.006(f)(4) applies may not deposit in the mail or with a common or contract carrier more than 10 carrier envelopes containing ballots voted by other persons in an election. This subsection does not apply to a carrier envelope containing a ballot voted by a member of the armed forces of the United States or the spouse or dependent of a member.

(c) A person commits an offense if the person knowingly violates Subsection (b) or (b-1) or knowingly directs a person to engage in conduct that violates Subsection (b-1). It is not a defense to an offense under this subsection that the voter voluntarily gave another person possession of the voter's carrier envelope.

(d) An offense under this section is a Class A ~~[B]~~ misdemeanor, unless the person is convicted of an offense under Section 64.036 for providing unlawful assistance to the same voter in connection with the same ballot, in which event the offense is a state jail felony.

1 (e) Subsections (a) and (c) do not apply if the person is
2 related to the applicant within the second degree by affinity or the
3 third degree by consanguinity, as determined under Subchapter B,
4 Chapter 573, Government Code~~[, or is registered to vote at the same~~
5 ~~address as the applicant]~~. Subsection (c) does not apply to an
6 employee of a state licensed care facility or state-certified
7 facility not subject to state licensure where the voter resides who
8 is working in the normal course of the employee's authorized
9 duties.

10 (f) It is an affirmative defense to prosecution for an
11 offense under this section that the person deposited carrier
12 envelopes containing ballots voted by another person if the voter
13 requested assistance from the person in depositing the envelope and
14 that assistance was provided in the course of the person's normal
15 duties as caretaker of the voter.

16 SECTION 2. Chapter 86, Election Code, is amended by adding
17 Section 86.0052 to read as follows:

18 Sec. 86.0052. COMPENSATION OF ANOTHER FOR COLLECTING
19 BALLOTING MATERIALS PROHIBITED. (a) A person commits an offense if
20 the person compensates another person to engage in conduct
21 prohibited by Section 86.0051(b-1).

22 (b) Except as provided by Subsection (c), an offense under
23 this section is a misdemeanor punishable by:

24 (1) confinement in jail for a term of not more than one
25 year or less than 30 days; or

26 (2) confinement described by Subdivision (1) and a
27 fine not to exceed \$4,000.

1 (c) An offense under this section is a state jail felony if
2 it is shown on the trial of an offense under this section that the
3 defendant was previously convicted two or more times under this
4 section.

5 SECTION 3. Section 86.006, Election Code, is amended by
6 amending Subsection (f) and adding Subsection (j) to read as
7 follows:

8 (f) A person commits an offense if the person knowingly
9 possesses an official ballot or official carrier envelope provided
10 under this code to another. Unless the person possessed the ballot
11 or carrier envelope with intent to defraud the voter or the election
12 authority, this subsection does not apply to a person who, on the
13 date of the offense, was:

14 (1) related to the voter within the second degree by
15 affinity or the third degree by consanguinity, as determined under
16 Subchapter B, Chapter 573, Government Code;

17 (2) registered to vote at the same address as the
18 voter;

19 (3) an early voting clerk or a deputy early voting
20 clerk;

21 (4) a person who possesses the carrier envelope in
22 order to deposit the envelope in the mail or with a common or
23 contract carrier and who provides the information required by
24 Section 86.0051(b) in accordance with that section;

25 (5) an employee of the United States Postal Service
26 working in the normal course of the employee's authorized duties;

27 [~~or~~]

1 (6) a common or contract carrier working in the normal
2 course of the carrier's authorized duties if the official ballot is
3 sealed in an official carrier envelope that is accompanied by an
4 individual delivery receipt for that particular carrier envelope;
5 or

6 (7) an employee of a state licensed care facility or
7 state-certified facility not subject to state licensure where the
8 voter resides who is working in the normal course of the employee's
9 authorized duties.

10 (j) It is an affirmative defense to prosecution for an
11 offense under Subsection (f) that the person possessed an official
12 ballot or official carrier envelope provided to a voter, other than
13 the person, if the voter requested assistance from the person and
14 that assistance was provided in the course of the person's normal
15 duties as caretaker of the voter.

16 SECTION 4. Section 86.010(h), Election Code, is amended to
17 read as follows:

18 (h) Subsection (f) does not apply if the person is related
19 to the applicant within the second degree by affinity or the third
20 degree by consanguinity, as determined under Subchapter B, Chapter
21 573, Government Code~~[, or is registered to vote at the same address~~
22 ~~as the applicant]~~.

23 SECTION 5. Section 86.013(d), Election Code, is amended to
24 read as follows:

25 (d) The following textual material, as prescribed by the
26 secretary of state, must be printed on the reverse side of the
27 official carrier envelope or on a separate sheet accompanying the

1 carrier envelope when it is provided:

2 (1) the prohibition prescribed by Section 86.006(b);

3 (2) the conditions for delivery by common or contract
4 carrier prescribed by Sections 81.005 and 86.006;

5 (3) the requirements for the legal execution and
6 delivery of the carrier envelope, including the limitation on
7 depositing carrier envelopes containing ballots voted by other
8 persons prescribed by Section 86.0051(b-1);

9 (4) the prohibition prescribed by Section 86.006(e);
10 and

11 (5) the offenses prescribed by Sections 86.006(f) and
12 86.010(f).

13 SECTION 6. The changes in law made by this Act apply only to
14 an offense committed on or after the effective date of this Act. An
15 offense committed before the effective date of this Act is governed
16 by the law in effect on the date the offense was committed, and the
17 former law is continued in effect for that purpose. For purposes of
18 this section, an offense was committed before the effective date of
19 this Act if any element of the offense occurred before that date.

20 SECTION 7. This Act takes effect September 1, 2013.

ADOPTED

FLOOR AMENDMENT NO. 1

MAY 21 2013 BY:

Aditya Sew
Secretary of the Senate

Ken Paxton
Scamper

Amend H.B. No. 148 (senate committee printing) as follows:

(1) Strike SECTION 1 of the bill (page 1, lines 22-56).

(2) In SECTION 2 of the bill, in added Section 86.0052, Election Code (page 1, lines 59 and 60), strike "OF ANOTHER FOR COLLECTING BALLOTING MATERIALS" and substitute "FOR CARRIER ENVELOPE ACTION".

(3) Strike added Section 86.0052(a), Election Code (page 1, line 60, through page 2, line 1), and substitute the following:

(a) A person commits an offense if the person:

(1) compensates another person for depositing the carrier envelope in the mail or with a common or contract carrier as provided by Section 86.0051(b), as part of any performance-based compensation scheme based on the number of ballots deposited or in which another person is presented with a quota of ballots to deposit as provided by Section 86.0051(b);

(2) engages in another practice that causes another person's compensation from or employment status with the person to be dependent on the number of ballots deposited as provided by Section 86.0051(b); or

(3) with knowledge that accepting compensation for such activity is illegal, accepts compensation for an activity described by Subdivision (1) or (2).

(4) Add the following immediately after added Section 86.0052(c), Election Code (page 2, between lines 11 and 12):

(d) An officer, director, or other agent of an entity that commits an offense under this section is punishable for the offense.

(e) For purposes of this section, compensation means any

1 form of monetary payment, goods, services, benefits, or promises
2 or offers of employment, or any other form of consideration
3 offered to another person in exchange for depositing ballots.

4 (5) Strike SECTIONS 3 and 4 of the bill (page 2, lines 12-
5 56).

6 (6) Add the following appropriately numbered SECTION to
7 the bill:

8 SECTION _____. Chapter 86, Election Code, is amended by
9 adding Section 86.0105 to read as follows:

10 Sec. 86.0105. COMPENSATION FOR ASSISTING VOTERS
11 PROHIBITED. (a) A person commits an offense if the person:

12 (1) compensates another person for assisting voters
13 as provided by Section 86.010, as part of any performance-based
14 compensation scheme based on the number of voters assisted or in
15 which another person is presented with a quota of voters to be
16 assisted as provided by Section 86.010;

17 (2) engages in another practice that causes another
18 person's compensation from or employment status with the person
19 to be dependent on the number of voters assisted as provided by
20 Section 86.010; or

21 (3) with knowledge that accepting compensation for
22 such activity is illegal, accepts compensation for an activity
23 described by Subdivision (1) or (2).

24 (b) Except as provided by Subsection (c), an offense under
25 this section is a misdemeanor punishable by:

26 (1) confinement in jail for a term of not more than
27 one year or less than 30 days; or

28 (2) confinement described by Subdivision (1) and a
29 fine not to exceed \$4,000.

30 (c) An offense under this section is a state jail felony
31 if it is shown on the trial of an offense under this section

1 that the defendant was previously convicted two or more times
2 under this section.

3 (d) An officer, director, or other agent of an entity that
4 commits an offense under this section is punishable for the
5 offense.

6 (e) For purposes of this section, compensation means any
7 form of monetary payment, goods, services, benefits, or promises
8 or offers of employment, or any other form of consideration
9 offered to another person in exchange for assisting voters.

10 (7) In SECTION 5 of the bill, in amended Section
11 86.013(d), Election Code (page 2, line 67), strike "limitation
12 on" and substitute "prohibition on compensation for".

13 (8) In SECTION 5 of the bill, in amended Section
14 86.013(d), Election Code (page 2, line 69), strike "prescribed
15 by Section 85.0051(b-1)" and substitute "under Section 86.0052".

16 (9) Renumber remaining SECTIONS of the bill accordingly.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 22, 2013

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB148 by Burkett (Relating to aid provided to certain voters; providing criminal penalties.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Elections Code to create offenses prohibiting the compensation of another for depositing a certain amount of ballots or assisting a certain amount of voters. The offenses would be a misdemeanor punishable by confinement in jail for not more than one year or less than 30 days or confinement and a fine not to exceed \$4,000. The offenses would be a state jail felony if a defendant has been previously convicted of this offense two or more times.

Creating an offense is expected to increase correctional supervision and/or incarceration populations and thereby increase demands on county and/or state correctional resources. However, it is assumed that the number of offenders supervised or incarcerated under this statute would not significantly impact state correctional agency resources.

The Secretary of State and the Department of Criminal Justice have also indicated that the provisions of the bill could be implemented within existing resources.

The bill would take effect on September 1, 2013 and apply to offenses committed on or after that date.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: UP, AG, CK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 8, 2013

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB148 by Burkett (Relating to aid provided to certain voters; providing criminal penalties.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Elections Code to create an offense prohibiting the compensation of another for collecting balloting materials. The offense would be a misdemeanor punishable by confinement in jail for not more than one year or less than 30 days or confinement and a fine not to exceed \$4,000. The offense would be a state jail felony if a defendant has been previously convicted of this offense two or more times.

Creating an offense is expected to increase correctional supervision and/or incarceration populations and thereby increase demands on county and/or state correctional resources. However, it is assumed that the number of offenders supervised or incarcerated under this statute would not significantly impact state correctional agency resources.

The Secretary of State and the Department of Criminal Justice have also indicated that the provisions of the bill could be implemented within existing resources.

The bill would take effect on September 1, 2013 and apply to offenses committed on or after that date.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: UP, AG, KJo, EP, CK, ESi

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 10, 2013

TO: Honorable Geanie Morrison, Chair, House Committee on Elections

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB148 by Burkett (Relating to aid provided to certain voters; providing criminal penalties.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Elections Code to create an offense prohibiting the compensation of another for collecting balloting materials. The offense would be a misdemeanor punishable by confinement in jail for not more than one year or less than 30 days or confinement and a fine not to exceed \$4,000. The offense would be a state jail felony if a defendant has been previously convicted of this offense two or more times.

Creating an offense is expected to increase correctional supervision and/or incarceration populations and thereby increase demands on county and/or state correctional resources. However, it is assumed that the number of offenders supervised or incarcerated under this statute would not significantly impact state correctional agency resources.

The Secretary of State and the Department of Criminal Justice have also indicated that the provisions of the bill could be implemented within existing resources.

The bill would take effect on September 1, 2013 and apply to offenses committed on or after that date.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: UP, KJo, EP, CK, ESi

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

February 24, 2013

TO: Honorable Geanie Morrison, Chair, House Committee On Elections

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB148 by Burkett (Relating to aid provided to certain voters; providing criminal penalties.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Elections Code as it relates to aid provided to certain voters. Under the provisions of the bill, punishment would be enhanced from a misdemeanor to a state jail felony or from a state jail felony to a felony of the third degree for certain violations of the Elections Code.

Increasing the penalty for any criminal offense is expected to result in increased demands upon the correctional resources of counties and or the State due to longer terms of probation, or longer terms of confinement in county jail, state jail, or prison. When an offense is changed from a misdemeanor to a felony, there is a transfer of the burden of confinement of convicted offenders from the counties to the State. For this analysis, the Legislative Budget Board assumes the number of offenders convicted under the provisions of the bill would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies.

The Secretary of State and the Department of Criminal Justice have also indicated that the provisions of the bill could be implemented within existing resources.

The bill would take effect on September 1, 2013 and apply to offenses committed on or after that date.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 307 Secretary of State, 696 Department of Criminal Justice

LBB Staff: UP, KJo, EP, CK, LM, AHE

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

83RD LEGISLATIVE REGULAR SESSION

April 9, 2013

TO: Honorable Geanie Morrison, Chair, House Committee on Elections

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB148 by Burkett (Relating to aid provided to certain voters; providing criminal penalties.), **Committee Report 1st House, Substituted**

The bill would amend the Elections Code to create an offense prohibiting the compensation of another for collecting balloting materials. The offense would be a misdemeanor punishable by confinement in jail for not more than one year or less than 30 days or confinement and a fine not to exceed \$4,000. The offense would be a state jail felony if a defendant has been previously convicted of this offense two or more times.

A state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years and, in addition to confinement, an optional fine not to exceed \$10,000 or Class A Misdemeanor punishment (mandatory post conviction community supervision).

Creating an offense is expected to increase correctional supervision and/or incarceration populations and thereby increase demands on county and/or state correctional resources. However, it is assumed that the number of offenders supervised or incarcerated under this statute would not significantly impact state correctional agency resources.

Source Agencies:

LBB Staff: UP, GG, LM, ESI

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

83RD LEGISLATIVE REGULAR SESSION

February 25, 2013

TO: Honorable Geanie Morrison, Chair, House Committee On Elections

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB148 by Burkett (Relating to aid provided to certain voters; providing criminal penalties.), **As Introduced**

The bill would amend the Elections Code as it relates to aid provided to certain voters. The provisions of the bill that enhance existing punishment for criminal offenses are the subject of this analysis. Under the provisions of the bill, punishment would be enhanced from a misdemeanor to a state jail felony for unlawful voter assistance (Class A), carrier envelope action by person other than a voter (Class B), and violations of assisting voters (Class A). The bill would also enhance punishment from a state jail felony to a felony of the third degree for carrier envelope action by person other than a voter and violations of the assisting voters if the person is convicted of unlawful voter assistance.

A Class A Misdemeanor is punishable by confinement in county jail for a term not to exceed one year and/or a fine not to exceed \$4,000. A state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years and, in addition to confinement, an optional fine not to exceed \$10,000 or Class A Misdemeanor punishment (mandatory post conviction community supervision). A felony of the third degree is punishable by confinement in prison for a term from 2 to 10 years and, in addition to confinement, an optional fine not to exceed \$10,000.

Increasing the penalty for any criminal offense is expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of probation, or longer terms of confinement in county jails or prison. When an offense is changed from a misdemeanor to a felony, there is a transfer of the burden of confinement of convicted offenders from the counties to the State. In fiscal year 2012, less than five offenders were arrested, placed on community supervision, or were released from community supervision for unlawful voter assistance. In fiscal year 2012, less than five offenders were arrested, admitted to state jail, were released from state jail, placed on community supervision, or released from community supervision for carrier envelope action by person other than a voter. In fiscal year 2012, less than five offenders were arrested, admitted to state jail, released from state jail, placed on community supervision, or released from community supervision for violating the assisting voter statute. For this analysis, the Legislative Budget Board assumes the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of State corrections agencies or on the demand for resources and services of those agencies.

Source Agencies:

LBB Staff: UP, GG, LM